

30

yellow

OCT 4 1988

ENFORCEMENT CONFIDENTIAL - FOIA EXEMPT

MEMORANDUM

SUBJECT: Settlement Conference Call With Coffman Body Shop and Big Woods Auto

FROM: Beth Koesterer
RCRA/IOWA

TO: Jane Kloeckner
CNSL

THRU: Luetta Flournoy
Chief, Iowa Section

On September 21, 1988, a conference call was held to further negotiate the Consent Agreement/Consent Order (CA/CO) with Coffman Body Shop and Big Woods Auto. The following participated:

Beth Koesterer - RCRA/IOWA - EPA
Jane Kloeckner - CNSL - EPA
Robert Dieter - Counsel for Coffman and Big Woods
Ron Coffman - Respondent
Melvin Cunningham - Respondent

Agenda as proposed:

1. discussion of compliance activities to date
2. discussion of closure plan
3. discussion of financial requirements
4. discussion of penalty
5. comments on CA/CO as drafted

Agreement was reached on agenda.

Mr. Coffman had obtained a cost estimate for preliminary soil sampling and analysis and preparation of a closure plan for both facilities. That cost, as proposed by Twin Cities Testing (TCT), is \$8774. It is the Respondents' intention to conduct preliminary sampling at the sites to determine if excavation of soil will be required. Mr. Dieter asked if the facilities could close without a closure plan. I told him no, that the regulations require a

WSTM:RCRA:KOESTERER:dj:memo2;disc#8;10-3-88

IOWA
KOESTERER

IOWA
FLOURNOY

L. Flournoy
10/4/88



R00127713
RCRA RECORDS CENTER

closure plan for hazardous waste storage facilities, which these facilities have been categorized as, due to the length of time that hazardous waste was in storage. I stressed this requirement repeatedly throughout the conference call. Jane added that we could incorporate language into the closure plan to the effect that if the facilities were not able to complete the activities as outlined in the approved closure plan, due to financial hardship, we would require immediate notification of such fact, and try to complete closure by some other mechanism. She also recommended that any preliminary soil sampling be conducted in accordance with an approved closure plan, to avoid duplicative efforts.

Mr. Dieter proposed that we continue negotiations on a 30 day by 30 day posture to enable the Respondents to determine if there is a problem with contamination at the sites. I asked when the soil sampling would be carried out, and if they intend to conduct it before the closure plan is submitted. Mr. Coffman did not know, as they just received the first draft of the sampling plan today. The plan calls for 5 to 7 borings, three (3) feet deep, per site. Mr. Dieter intends to make some changes to the plan regarding administrative procedures. Jane stated that it sounds as if this sampling plan could be incorporated into the closure plan.

We then turned to the topic of financial assurances. Mr. Coffman's insurance representative is checking with other insurance companies to determine if the sudden liability coverage is available and how much the premiums would cost. I will provide them with the names of several insurance companies used by other hazardous waste facilities. If the liability coverage is not available, or Mr. Coffman cannot afford the premiums and the costs would prevent the implementation of the closure plan, the CA/CO could include language to allow for enforcement discretion if adequate documentation of the good faith efforts expended and/or financial hardship were submitted. Mr. Coffman will also check into the cost of closure cost assurance.

We inquired as to whether Mr. Coffman still intends to be fully responsible for the closure of the Big Woods facility. Mr. Coffman still intends to be responsible. The Respondents will allow a statement to this effect in the CA. Currently, the agreement between Mr. Coffman and Mr. Cunningham is not in writing.

Penalties were then discussed. In light of the costs to be incurred for closure of the facilities, and review of the tax returns submitted by Mr. Coffman, the Agency is prepared to significantly mitigate the proposed penalties, based on the

outcome of the ABEL program. We requested a counter-proposal from the Respondents. Mr. Dieter will furnish us with such proposal within the next few days. He stated that the proposal could be in the range of \$500 to \$1000. We requested this in writing.

The Respondents will try to proceed with some preliminary soil sampling and keep the Agency informed of their progress. The soil samples will be tested for solvents, mineral spirits, and metals. We asked to see a copy of the sampling plan before it is implemented, to get a better idea of the activities to be performed and possibly send an Agency representative to witness the sampling effort. This was agreed to by the Respondents. Mr. Coffman will ask TCT for an estimated timeframe for closure plan submission to the Agency.

Mr. Dieter would like to have the closure plan approved before signing the CA/CO, so as not to expose his clients to an open-ended Agreement that would force them to implement a closure plan when they cannot afford to do so. I informed Mr. Dieter that this is not how we usually proceed with this type of case, in that the CA/CO is usually signed before any documents are submitted to the Agency for approval or implementation. However, in consideration of the financial situation of the Respondents, we would propose this procedure to our management. But we would have to move quickly, as we cannot afford to leave the CA/CO open for much longer. Such a proposal might require specific deadlines for the planned activities and stipulations (and assurances from the Respondents) regarding good faith efforts. If further excavation is required at the sites, we probably would not be able to keep the CA/CO open until the clean-up is finished. We added that we could not guarantee anything at this time. We will call him as soon as possible if this proposal is not acceptable to the Agency's management.

Mr. Dieter will submit to us next week: soil sampling and analysis plan, if available from the consultant, an estimated date for closure plan submission, a counter proposal for the penalty amount, a narrative of efforts expended to date to obtain liability coverage, comments on the first draft of the CA/CO mailed to them in mid-August, and a narrative of the overall progress made towards compliance with the RCRA requirements outlined in the Complaint.

Upon receipt of this information, Jane and I will prepare a second draft CA/CO to be sent to Mr. Dieter. We will allow them to review this second draft for about one week and schedule another conference call.

The Respondents have indicated their willingness to enter into the CA/CO, provided the closure plan is approved prior to the execution of the CA/CO. The Respondents also indicated a willingness to continue to submit requests for extensions of time to file an Answer on a 30 day basis.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

OCT 4 1988

ENFORCEMENT CONFIDENTIAL - FOIA EXEMPT

MEMORANDUM

SUBJECT: Settlement Conference Call With Coffman Body Shop and
Big Woods Auto

FROM: Beth Koesterer *Beth Koesterer*
RCRA/IOWA

TO: Jane Kloeckner
CNSL

THRU: Luetta Flournoy *Luetta Flournoy*
Chief, Iowa Section

On September 21, 1988, a conference call was held to further negotiate the Consent Agreement/Consent Order (CA/CO) with Coffman Body Shop and Big Woods Auto. The following participated:

Beth Koesterer - RCRA/IOWA - EPA
Jane Kloeckner - CNSL - EPA
Robert Dieter - Counsel for Coffman and Big Woods
Ron Coffman - Respondent
Melvin Cunningham - Respondent

Agenda as proposed:

1. discussion of compliance activities to date
2. discussion of closure plan
3. discussion of financial requirements
4. discussion of penalty
5. comments on CA/CO as drafted

Agreement was reached on agenda.

Mr. Coffman had obtained a cost estimate for preliminary soil sampling and analysis and preparation of a closure plan for both facilities. That cost, as proposed by Twin Cities Testing (TCT), is \$8774. It is the Respondents' intention to conduct preliminary sampling at the sites to determine if excavation of soil will be required. Mr. Dieter asked if the facilities could close without a closure plan. I told him no, that the regulations require a

closure plan for hazardous waste storage facilities, which these facilities have been categorized as, due to the length of time that hazardous waste was in storage. I stressed this requirement repeatedly throughout the conference call. Jane added that we could incorporate language into the closure plan to the effect that if the facilities were not able to complete the activities as outlined in the approved closure plan, due to financial hardship, we would require immediate notification of such fact, and try to complete closure by some other mechanism. She also recommended that any preliminary soil sampling be conducted in accordance with an approved closure plan, to avoid duplicative efforts.

Mr. Dieter proposed that we continue negotiations on a 30 day by 30 day posture to enable the Respondents to determine if there is a problem with contamination at the sites. I asked when the soil sampling would be carried out, and if they intend to conduct it before the closure plan is submitted. Mr. Coffman did not know, as they just received the first draft of the sampling plan today. The plan calls for 5 to 7 borings, three (3) feet deep, per site. Mr. Dieter intends to make some changes to the plan regarding administrative procedures. Jane stated that it sounds as if this sampling plan could be incorporated into the closure plan.

We then turned to the topic of financial assurances. Mr. Coffman's insurance representative is checking with other insurance companies to determine if the sudden liability coverage is available and how much the premiums would cost. I will provide them with the names of several insurance companies used by other hazardous waste facilities. If the liability coverage is not available, or Mr. Coffman cannot afford the premiums and the costs would prevent the implementation of the closure plan, the CA/CO could include language to allow for enforcement discretion if adequate documentation of the good faith efforts expended and/or financial hardship were submitted. Mr. Coffman will also check into the cost of closure cost assurance.

We inquired as to whether Mr. Coffman still intends to be fully responsible for the closure of the Big Woods facility. Mr. Coffman still intends to be responsible. The Respondents will allow a statement to this effect in the CA. Currently, the agreement between Mr. Coffman and Mr. Cunningham is not in writing.

Penalties were then discussed. In light of the costs to be incurred for closure of the facilities, and review of the tax returns submitted by Mr. Coffman, the Agency is prepared to significantly mitigate the proposed penalties, based on the

outcome of the ABEL program. We requested a counter-proposal from the Respondents. Mr. Dieter will furnish us with such proposal within the next few days. He stated that the proposal could be in the range of \$500 to \$1000. We requested this in writing.

The Respondents will try to proceed with some preliminary soil sampling and keep the Agency informed of their progress. The soil samples will be tested for solvents, mineral spirits, and metals. We asked to see a copy of the sampling plan before it is implemented, to get a better idea of the activities to be performed and possibly send an Agency representative to witness the sampling effort. This was agreed to by the Respondents. Mr. Coffman will ask TCT for an estimated timeframe for closure plan submission to the Agency.

Mr. Dieter would like to have the closure plan approved before signing the CA/CO, so as not to expose his clients to an open-ended Agreement that would force them to implement a closure plan when they cannot afford to do so. I informed Mr. Dieter that this is not how we usually proceed with this type of case, in that the CA/CO is usually signed before any documents are submitted to the Agency for approval or implementation. However, in consideration of the financial situation of the Respondents, we would propose this procedure to our management. But we would have to move quickly, as we cannot afford to leave the CA/CO open for much longer. Such a proposal might require specific deadlines for the planned activities and stipulations (and assurances from the Respondents) regarding good faith efforts. If further excavation is required at the sites, we probably would not be able to keep the CA/CO open until the clean-up is finished. We added that we could not guarantee anything at this time. We will call him as soon as possible if this proposal is not acceptable to the Agency's management.

Mr. Dieter will submit to us next week: soil sampling and analysis plan, if available from the consultant, an estimated date for closure plan submission, a counter proposal for the penalty amount, a narrative of efforts expended to date to obtain liability coverage, comments on the first draft of the CA/CO mailed to them in mid-August, and a narrative of the overall progress made towards compliance with the RCRA requirements outlined in the Complaint.

Upon receipt of this information, Jane and I will prepare a second draft CA/CO to be sent to Mr. Dieter. We will allow them to review this second draft for about one week and schedule another conference call.

The Respondents have indicated their willingness to enter into the CA/CO, provided the closure plan is approved prior to the execution of the CA/CO. The Respondents also indicated a willingness to continue to submit requests for extensions of time to file an Answer on a 30 day basis.